



# House of Representatives

General Assembly

**File No. 195**

*January Session, 2011*

Substitute House Bill No. 6347

*House of Representatives, March 24, 2011*

The Committee on Labor and Public Employees reported through REP. ZALASKI of the 81st Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING THE ENFORCEMENT OF THE FAMILY AND MEDICAL LEAVE ACT FOR STATE EMPLOYEES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 5-248a of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 (a) For purposes of this section, "child" means a biological, adopted  
4 or foster child, stepchild, child of whom a person has legal  
5 guardianship or custody, or, in the alternative, a child of a person  
6 standing in loco parentis, who is (1) under eighteen years of age, or (2)  
7 eighteen years of age or older and incapable of self-care because of a  
8 mental or physical disability. Each permanent employee, as defined in  
9 subdivision (20) of section 5-196, shall be entitled to a family leave of  
10 absence upon the birth or adoption of a child of such employee, or  
11 upon the serious illness of a child, spouse or parent of such employee;  
12 and a medical leave of absence upon the serious illness of such  
13 employee or in order for such employee to serve as an organ or bone

14 marrow donor. The total amount of time that an employee is entitled  
15 to for leaves of absence pursuant to this section shall be twenty-four  
16 weeks within any two-year period. Any such leave of absence shall be  
17 without pay. Upon the expiration of any such leave of absence, the  
18 employee shall be entitled (A) to return to the employee's original job  
19 from which the leave of absence was provided or, if not available, to an  
20 equivalent position with equivalent pay, except that in the case of a  
21 medical leave, if the employee is medically unable to perform the  
22 employee's original job upon the expiration of such leave, the  
23 Personnel Division of the Department of Administrative Services shall  
24 endeavor to find other suitable work for such employee in state  
25 service, and (B) to all accumulated seniority, retirement, fringe benefit  
26 and other service credits the employee had at the commencement of  
27 such leave. Such service credits shall not accrue during the period of  
28 the leave of absence.

29 (b) The leave of absence benefits granted by this section shall be in  
30 addition to any other paid leave benefits and benefits provided under  
31 subdivision (7) of subsection (a) of section 46a-60 which are otherwise  
32 available to the employee.

33 (c) Any permanent employee who requests a medical leave of  
34 absence due to the employee's serious illness or a family leave of  
35 absence due to the serious illness of a child, spouse or parent pursuant  
36 to subsection (a) of this section or a military caregiver leave of absence  
37 pursuant to subsection (g) of this section shall be required by the  
38 employee's appointing authority, prior to the inception of such leave,  
39 to provide sufficient written certification from the physician of such  
40 employee, child, spouse, parent or next of kin of the employee, as  
41 appropriate, of the nature of such illness and its probable duration. For  
42 the purposes of this section, "serious illness" means an illness, injury,  
43 impairment or physical or mental condition that involves (1) inpatient  
44 care in a hospital, hospice or residential care facility, or (2) continuing  
45 treatment or continuing supervision by a health care provider.

46 (d) Any permanent employee who requests a medical leave of

47 absence in order to serve as an organ or bone marrow donor pursuant  
48 to subsection (a) of this section shall be required by the employee's  
49 appointing authority, prior to the inception of such leave, to provide  
50 sufficient written certification from the physician of such employee of  
51 the proposed organ or bone marrow donation and the probable  
52 duration of the employee's recovery period from such donation.

53 (e) Any permanent employee who requests a family leave of  
54 absence pursuant to subsection (a) of this section or a military  
55 caregiver leave of absence pursuant to subsection (g) of this section  
56 shall submit to the employee's appointing authority, prior to the  
57 inception of such leave, a signed statement of the employee's intent to  
58 return to the employee's position in state service upon the termination  
59 of such leave.

60 (f) Notwithstanding the provisions of subsection (b) of section 38a-  
61 554, the state shall pay for the continuation of health insurance benefits  
62 for the employee during any leave of absence taken pursuant to this  
63 section. In order to continue any other health insurance coverages  
64 during such leave, the employee shall contribute that portion of the  
65 premium the employee would have been required to contribute had  
66 the employee remained an active employee during the leave period.

67 (g) Each permanent employee, as defined in subdivision (20) of  
68 section 5-196, who is the spouse, son or daughter, parent or next of kin  
69 of a current member of the armed forces, as defined in section 27-103,  
70 who is undergoing medical treatment, recuperation or therapy, is  
71 otherwise in outpatient status or is on the temporary disability retired  
72 list for a serious injury or illness incurred in the line of duty, shall be  
73 entitled to a one-time benefit of twenty-six workweeks of leave within  
74 a single two-year period for each armed forces member per serious  
75 injury or illness incurred in the line of duty.

76 (h) Any permanent employee aggrieved by a violation of subsection  
77 (a) of this section or subsection (a) or (b) of section 31-51pp may file a  
78 complaint with the Labor Commissioner alleging violation of the  
79 provisions of subsection (a) of this section or subsection (a) or (b) of

80 section 31-51pp. Upon receipt of any such complaint, the  
 81 commissioner shall hold a hearing. After the hearing, the  
 82 commissioner shall send each party a written copy of the  
 83 commissioner's decision. The commissioner may award such employee  
 84 all appropriate relief, including rehiring or reinstatement to the  
 85 employee's previous job, payment of back wages and reestablishment  
 86 of employee benefits to which such employee otherwise would have  
 87 been eligible if a violation of this subsection had not occurred. Any  
 88 party aggrieved by the decision of the commissioner may appeal the  
 89 decision to the Superior Court in accordance with the provisions of  
 90 chapter 53.

91 [(h)] (i) For purposes of subsection (g) of this section, (1) "next of  
 92 kin" means the armed forces member's nearest blood relative, other  
 93 than the covered armed forces member's spouse, parent, son or  
 94 daughter, in the following order of priority: Blood relatives who have  
 95 been granted legal custody of the armed forces member by court  
 96 decree or statutory provisions, brothers and sisters, grandparents,  
 97 aunts and uncles, and first cousins, unless the covered armed forces  
 98 member has specifically designated in writing another blood relative  
 99 as his or her nearest blood relative for purposes of military caregiver  
 100 leave, in which case the designated individual shall be deemed to be  
 101 the covered armed forces member's next of kin; and (2) "son or  
 102 daughter" means a biological, adopted, foster child, stepchild, legal  
 103 ward or a child for whom the eligible employee or armed forces  
 104 member stood in loco parentis and who is any age.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2011	5-248a
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**Statement of Legislative Commissioners:**

Subsection (h) of section 1 was rewritten to include the phrase "subsection (a) of this section or", which was inadvertently omitted.

**LAB** Joint Favorable Subst.-LCO

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Labor Dept.	GF - Potential Cost	Less than \$84,860	Less than \$86,557
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Potential Cost	Less than \$20,162	Less than \$20,660

Note: GF=General Fund

**Municipal Impact:** None

#### **Explanation**

The bill makes the Department of Labor (DOL) responsible for the enforcement of the family and medical leave benefits provided to permanent state employees under the State Personnel Act. This will result in less than ten <sup>2</sup> estimated additional complaints filed with DOL that result in probable cause hearings. This may require a half-time Wage Investigator (associated salary of \$35,554 and benefits of \$8,447) and one half-time Staff Attorney II (with associated salary of \$49,306 and fringe benefits of \$11,715) beginning in FY 12.

<sup>1</sup> The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with changes in personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 23.76%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/10 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 12 and FY 13. Therefore, new positions will not impact the state's pension contribution until FY 14 after the next scheduled certification on 6/30/2012.

<sup>2</sup> It is estimated that 600,000 – 700,000 employees are currently covered by the State Family Medical Leave Act. Currently two Staff Attorneys review approximately 100 cases annually for probable cause hearings regarding State Family Medical Leave Act, resulting in 20 hearings per year. Therefore, allowing an additional 54,000 state employees to make complaints under the State Personnel Act is anticipated to result in less than 10 such probable cause hearings a year.

The bill could also result in potential additional hearings before the court. It is anticipated that the number of additional hearings would be less than ten, and would not result in additional costs to the Judicial Department.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: *State Comptroller Report on Permanent State Employees (All Funds Basis)*  
*State Department of Labor - Quarterly Report on Worksites by Class Size*  
*US Commerce Department - 2008 State by State Report on Paid Employees by Enterprise Size*

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**OLR Bill Analysis****sHB 6347*****AN ACT CONCERNING THE ENFORCEMENT OF THE FAMILY AND MEDICAL LEAVE ACT FOR STATE EMPLOYEES.*****SUMMARY:**

This bill adds an enforcement provision to the family and medical leave (FML) benefits provided to permanent state employees by the State Personnel Act. It allows them to file a complaint with the labor commissioner alleging they were denied their FML benefits or were discharged or discriminated against for (1) requesting or using their FML benefits, (2) filing a complaint or initiating a proceeding to enforce their FML rights, or (3) providing information or testifying in connection with an inquiry or proceeding related to FML rights.

The bill requires the commissioner to hold a hearing on such a complaint and issue a written decision to each party. It allows him to award all appropriate relief, including rehiring or reinstatement, payment of back wages, and reestablishment of employee benefits.

The bill also allows parties to appeal the commissioner's decision to the Superior Court in accordance with the laws governing claims against the state.

EFFECTIVE DATE: October 1, 2011

**BACKGROUND*****Family and Medical Leave Acts***

Three different laws provide family and medical benefits in Connecticut: (1) the federal Family and Medical Leave Act (FMLA), which applies to businesses with 50 or more employees, including state and municipal employees; (2) the state FMLA, which applies to

private-sector employers with more than 75 employees; and (3) the State Personnel Act, which applies to permanent state employees.

Federal FMLA law allows employees to enforce their rights through either federal court or the U.S. Department of Labor. State FMLA regulations allow employees to enforce their rights through the state Labor Department. However, the lack of an enforcement provision in the State Personnel Act has led to involvement by the courts (see *Siuzdak v. Greater Bridgeport Community Mental Health Center*, Superior Court, Judicial District of Fairfield at Bridgeport, Docket No. CV 05 4013170, October 13, 2009, 48 Conn. L. Rptr. 680, and *Kenney v. Department of Mental Health and Addiction Services*, Superior Court, Judicial District of Hartford, Docket No. CV 02 0813589, October 24, 2007, 44 Conn. L. Rptr. 356).

#### **COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea 11      Nay 0      (03/15/2011)